

ESTTA Tracking number: **ESTTA14409**

Filing date: **09/02/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	MOOSEHEAD BREWERIES LIMITED
<b>Granted to Date of previous extension</b>	09/04/2004
<b>Address</b>	MOOSEHEAD BREWERIES LIMITED 89 Main Street W P.O. Box 3100 Saint John, NB E2M 3N2 CANADA

<b>Attorney information</b>	Amanda H. Wilcox Hahn Loeser + Parks LLP 1225 West Market Street Akron, OH 44313-7188 UNITED STATES trademarks@hahnlaw.com Phone:330-864-5550
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#### Applicant Information

<b>Application No</b>	76532253	<b>Publication date</b>	05/04/2004
<b>Opposition Filing Date</b>	09/02/2004	<b>Opposition Period Ends</b>	09/04/2004
<b>Applicants</b>	Saccio, Patricia E. Saccio, Charles E.		

### **Goods/Services Affected by Opposition**

Class 043. First Use: 20021101 First Use In Commerce: 20021101

All goods and services in the class are opposed, namely: restaurant and bar services

<b>Attachments</b>	Notice of Opposition against HUNGRY MOOSE.pdf ( 7 pages ) Exhibit 1 - HUNGRY MOOSE.pdf ( 1 page )
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<b>Signature</b>	/Amanda H. Wilcox/
<b>Name</b>	Amanda H. Wilcox
<b>Date</b>	09/02/2004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF:** Application Serial No. 76/532,253  
**PUBLISHED IN THE OFFICIAL GAZETTE OF** May 4, 2004  
**INTERNATIONAL CLASS:** 43

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MOOSEHEAD BREWERIES LIMITED	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.: _____
	:	
	:	Serial No. 76/532,253
	:	
PATRICIA E. SACCIO and	:	
CHARLES E. SACCIO, Individuals,	:	
d.b.a. HUNGRY MOOSE	:	
	:	
Applicants.	:	
	:	

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**NOTICE OF OPPOSITION**

Moosehead Breweries Limited believes that it will be damaged by the registration of the mark "HUNGRY MOOSE," Serial No. 76/532,253 published in the *Official Gazette* of May 4, 2004, and hereby opposes registration of same on the following grounds:

1. Opposer, Moosehead Breweries Limited (hereinafter "Moosehead" or "Opposer") is a corporation organized under the laws of Canada, having its principal office and place of business at 89 Main Street W.; P.O. Box 3100; Saint John, N.B. Canada E2M 3N2.
2. Opposer is the manufacturer of beer sold and distributed throughout the world under its MOOSE family of trademarks, which includes the word marks MOOSE and MOOSEHEAD, as well as the MOOSEHEAD design marks displaying the head and antlers of a moose. Opposer's business, among other things, includes the manufacture,

sale, and distribution of a variety of beers, and the sale of related consumer products promoting the MOOSEHEAD name and MOOSE family of marks in connection with its brand of beers. The related products include but are not limited to items such as clothing, hats, towels, chairs, tents, coolers, bags, golf balls, and other miscellaneous souvenir items.

3. Opposer is the owner of the entire right, title and interest in and to the registered trademarks for the MOOSE family of marks, as evidenced by the following Federal trademark registrations and applications in the U.S. Patent and Trademark Office on the Principal Register. The following list is not a comprehensive list of Opposer's marks, but instead serves to illustrate the scope of the MOOSE family of marks.

Trademark	Application No. / Filing Date	Registration No. / Registration Date	Date of First Use in Commerce (if applicable)
<b>MOOSEHEAD PALE ALE A BREW OF QUALITY AND CHARACTER &amp; design</b>	71/338,429 June 1, 1933	0,319,946 December 11, 1934	May 1, 1929
<b>MOOSEHEAD CANADIAN LAGER BEER &amp; design</b>	73/244,321 December 27, 1979	1,198,187 June 15, 1982	April 22, 1978
<b>MOOSEHEAD</b>	73/714,514 March 3, 1988	1,511,184 November 1, 1988	May 1, 1929
<b>MOOSEHEAD</b>	73/758,597 October 19, 1988	1,598,511 May 29, 1990	

<b>THE MOOSE IS LOOSE</b>	73/802,609 May 25, 1989	1,621,134 November 6, 1990	
<b>MOOSEHEAD GRAND PRIX &amp; design</b>	74/134,543 January 29, 1991	1,860,856 November 1, 1994	
<b>MOOSEHEAD GRAND PRIX</b>	74/134,544 January 29, 1991	1,949,834 January 23, 1996	
<b>MOOSEHEAD MUSIC</b>	74/138,580 February 12, 1991	1,937,635 November 28, 1995	
<b>MOOSEHEAD MUSIC &amp; design</b>	74/138,644 February 12, 1991	1,882,100 March 7, 1995	
<b>MOOSE MILK FAMILY TRADITION &amp; design</b>	74/233,296 December 24, 1991	2,534,345 January 29, 2002	February 19, 2001
<b>HEED THE CALL &amp; design</b>	75/436,767 February 19, 1998	2,424,334 January 30, 2001	
<b>MOOSE BREW</b>	75/512,219 February 19, 1998		
<b>MOOSE</b>	75/043,269 January 19, 1996	2,100,821 September 30, 1997	
<b>CAMP MOOSEHEAD</b>	76/288,045 July 20, 2001	2,668,341 December 31, 2002	June, 1999

The above listed applications and registrations are in all respects valid, subsisting and owned by Opposer, and the registered marks are currently in use. Opposer has filed affidavits of continuing use and incontestability under §§ 8 & 15 of the Trademark Act of 1946 for all of the registrations listed above that have been in effect for at least six years, with the exception of the registration for MOOSE, Reg. No. 2,100,821, (a §15 affidavit was not filed with the §8 affidavit). The Section 15 affidavits were accepted by

the U.S. Patent and Trademark Office, which means that Opposer's registrations for these marks are incontestable.

4. The MOOSEHEAD mark was adopted by Opposer at least as early as May, 1929 for use in connection with ale, beer, stout, porter and lager. Opposer has since created a MOOSE family of marks which have been in use since the late 1970's in connection with a variety of beers, and also in connection with consumer products and other events, including but not limited to clothing, posters, hats, stickers and decals, beverage holders, sporting events, sporting equipment, chairs, towels, tents and outdoor gear. Opposer's MOOSE family of marks include marks which include the term "MOOSE" and/or the likeness of a moose in connection with beer and other alcoholic beverages. Examples of such marks include the word mark "MOOSE" for "brewed alcoholic beverages, namely, beer, ale, stout and lager" and various design marks displaying the head and antlers of a moose, such as "HEED THE CALL & design."

5. Opposer has been engaged in its business for many years prior to November 1, 2002, the date that Patricia E. Saccio and Charles E. Saccio, d.b.a. HUNGRY MOOSE (Hereinafter referred to as "HUNGRY MOOSE" or "Applicants") began using their mark HUNGRY MOOSE, and prior to June 24, 2003, the date that Applicants filed their present trademark application for HUNGRY MOOSE for restaurant and bar services based on actual use of the mark in interstate commerce.

6. Applicant's trademark HUNGRY MOOSE is substantially similar to Opposer's trademarks for MOOSEHEAD, MOOSE, and the other marks in the MOOSE family of marks.

7. Opposer's products and Applicant's services are so closely related that if Applicant's services are marketed and sold under a confusingly similar mark, a likelihood of confusion will result.

8. The goods and services for which Applicant seeks registration and Opposer's products would ordinarily be sold and distributed to the same classes of the purchasing public, and pass through the same channels of trade.

9. Opposer has spent and continues to spend large sums of money in the advertisement of its goods bearing its MOOSE family of marks, and by reason of such advertising and the high quality of its products carrying such trademark, Opposer enjoys a valuable goodwill and an enviable reputation with respect to its trademark and the goods associated therewith.

10. As a result of the foregoing, the purchasing public familiar with Opposer's products and Opposer's MOOSEHEAD trademarks are likely to be confused, misled, or deceived into thinking that the services of Applicant are products of Opposer or are in some way sponsored by or connected with Opposer, to Opposer's irreparable damage and injury.

11. Opposer will be injured if registration is granted to Applicant because its mark HUNGRY MOOSE falsely suggests a connection with Opposer Moosehead, and Moosehead's products bearing any of the marks in the MOOSE family of trademarks. Opposer has no control over the nature and quality of the services or products offered by Applicant under the HUNGRY MOOSE trademark, and thus, will be damaged and irreparably harmed by reason of the loss of control over its reputation and the erosion of its goodwill in the MOOSE family of trademarks.

12. As a result of over twenty-five (25) years of continuous and substantial use, as well as significant amounts of advertising and sales, Opposer's trademark MOOSEHEAD is a famous trademark within the meaning of § 43(c) of the Lanham Act.

13. If registration is granted to Applicant for its HUNGRY MOOSE trademark, Opposer will be further damaged and irreparably harmed because registration and use of the HUNGRY MOOSE trademark is likely to dilute the distinctive quality of Opposer's MOOSE family of trademarks.

14. For the reasons set forth above, Opposer believes and accordingly asserts that the goodwill in its MOOSE family of marks will be damaged by registration of Applicant's HUNGRY MOOSE mark and that Applicant should therefore be denied registration of the term HUNGRY MOOSE for which it has made application.



WHEREFORE, Opposer prays that this Opposition be sustained and that Applicant's mark HUNGRY MOOSE, serial No. 76/532,253 be refused registration.

Opposer herewith submits this Notice of Opposition along with the requisite filing fee in the amount of three hundred dollars (\$300). Please charge any additional fees or credit any excess to our Deposit Account No. 15-0450.

Date: Sept. 2, 2004

Respectfully submitted,

Amanda H. Wilcox

Mark A. Watkins

Amanda H. Wilcox

Hahn Loeser + Parks, LLP

1225 West Market Street

Akron, Ohio 44313-7188

330-864-5550

fax: 330-864-7986

Enclosures:

Exhibit 1

Attorneys for Opposer,

Moosehead Breweries Limited

MAY 4, 2004

U.S. PATENT AND TRADEMARK OFFICE

TM 417

**CLASS 43—(Continued).**

SN 76-518,619. LIN, BRIAN C., GRAND TERRACE, CA.  
FILED 6-2-2003.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO  
USE "SWEET", APART FROM THE MARK AS SHOWN.  
FOR RESTAURANT SERVICES AND TAKE-OUT RES-  
TAURANT SERVICES (U.S. CLS. 100 AND 101).  
H. M. FISHER, EXAMINING ATTORNEY

**CLASS 43—(Continued).**

SN 76-532,307. MONGELLUZZI, FRANK, CLEARWATER,  
FL. FILED 7-25-2003.

**FRANKIE MEATBALLS**

"FRANKIE MEATBALLS" DOES NOT IDENTIFY A  
PARTICULAR LIVING INDIVIDUAL.  
FOR RESTAURANT SERVICES (U.S. CLS. 100 AND  
101).  
BERYL GARDNER, EXAMINING ATTORNEY

SN 76-533,470. HOSTMARK HOSPITALITY GROUP,  
SCHAUMBURG, IL. FILED 7-30-2003.

**AMALFI**

FOR HOTELS AND RESORT HOTELS (U.S. CLS. 100  
AND 101).  
CAROLINE WOOD, EXAMINING ATTORNEY

SN 76-538,070. SOYSALAN, OSMAN H., LEESBURG, VA.  
FILED 8-4-2003.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO  
USE "EUROPEAN GOURMET BAKERY", APART FROM  
THE MARK AS SHOWN.  
FOR CARRYOUT AND EAT-IN RESTAURANT FEA-  
TURING BAKERY GOODS (U.S. CLS. 100 AND 101).  
CYNTHIA SLOAN, EXAMINING ATTORNEY

SN 76-539,359. THE CHANLER, INC., NEWPORT, RI. FILED  
7-31-2003.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO  
USE RESTAURANT, APART FROM THE MARK AS  
SHOWN.  
FOR RESTAURANT SERVICES (U.S. CLS. 100 AND  
101).  
MICHAEL KAZAZIAN, EXAMINING ATTORNEY

SN 76-524,212. MORTON'S OF CHICAGO, INC., CHICAGO,  
IL. FILED 6-19-2003.

**MORTON'S THE  
STEAKHOUSE**

OWNER OF U.S. REG. NOS. 1,505,273, 1,832,491 AND  
OTHERS.  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO  
USE "STEAKHOUSE", APART FROM THE MARK AS  
SHOWN.  
FOR RESTAURANT AND BAR SERVICES (U.S. CLS.  
100 AND 101).  
GINA HAYES, EXAMINING ATTORNEY

SN 76-527,545. AMERICAN ITALIAN PASTA COMPANY,  
KANSAS CITY, MO. FILED 7-3-2003.

**MAKESAMEAL.COM**

FOR PROVIDING INFORMATION IN THE FIELD OF  
COOKING RECIPES VIA THE INTERNET (U.S. CLS. 100  
AND 101).  
KARLA PERKINS, EXAMINING ATTORNEY

SN 76-532,253. SACCIO, PATRICIA E., DBA HUNGRY  
MOOSE, PARK CITY, UT. AND SACCIO, CHARLES E.,  
DBA HUNGRY MOOSE, PARK CITY, UT. FILED 6-24-  
2003.

**HUNGRY MOOSE**

FOR RESTAURANT AND BAR SERVICES (U.S. CLS.  
100 AND 101).  
FIRST USE 11-1-2002; IN COMMERCE 11-1-2002.  
LAVERNE THOMPSON, EXAMINING ATTORNEY

**EXHIBIT**

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